

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TN

00 APR 13 PM 1 08

CONSUMER ADVOCATE DIVISION)

v.)

BELLSOUTH TELECOMMUNICATIONS,)
INC.)

DOCKET NO. 00-00641

MOTION TO COMPEL, TO ISSUE SUBPOENAS, TAKE DEPOSITIONS, TO EFFECT
DISCOVERY AND TO AUDIT, OR A MOTION IN LIMINE

Comes the Consumer Advocate Division, on behalf of Tennessee consumers, and in accordance with the directions of the Hearing Officer and moves to compel answers by BellSouth, to issue subpoenas and to effect discovery of BellSouth in accordance with the Tennessee Rules of Civil Procedure, the Uniform Administrative Procedures Act and Title 65 of Tennessee Code Annotated. Alternatively, that the Hearing Officer should grant a Motion in Limine prohibiting BellSouth from introducing at the hearing any basis for its proposed late charge payments of which sufficient disclosure or notice is not provided in its answers to discovery. For cause the Consumer Advocate Division would show:

1. That the hearing officer in this case ordered the parties to respond to discovery by April 6, 2000 and to present Motions to Compel or for additional discovery by April 13, 2000.
2. That BellSouth's response to discovery was to object to every discovery request and provide only the information it deemed relevant.
3. That BellSouth's response to discovery and basis for not complying with the discovery requests of the Consumer Advocate Division is insufficient and contrary to the Rules of

Civil Procedure.

4. That BellSouth's insufficient discovery responses impair the exercise of due diligence, and are dilatory.
5. That the character of the information sought by the Consumer Advocate Division in this proceeding is relevant and material or likely to lead to the discovery of admissible evidence. [items 16, 23, 25, 26, 33(BellSouth objected to providing information so the answer is not complete), 34, 35, 37, 38, 40, 41, 42, 43, 44, 45].
6. That the Consumer Advocate Division has a substantial need for discovery of the materials to which BellSouth objected in the preparation of the case and that the Consumer Advocate Division is unable without undue hardship to obtain the materials by other means since the information is in the exclusive possession of BellSouth and a motion to compel should be granted. [items 16, 23, 25, 26, 33(BellSouth objected to providing information so the answer is not complete), 34, 35, 37, 38, 40, 41, 42, 43, 44, 45].
7. That the burden of deriving or ascertaining the information in BellSouth's possession is not the same for the Consumer Advocate Division as BellSouth, or that an audit by the Consumer Advocate Division in accordance with TRCP 33.03 is warranted and should be granted and a motion to compel should be granted. [items 2, 3, 16, 18, 23, 24, 25, 26, 33(BellSouth objected to providing information so the answer is not complete), 34, 35, 37, 38, 40, 41, 42, 43, 44, 45].
8. That subpoenas are warranted and a motion to compel should be granted so the Consumer Advocate Division can proceed with due diligence to identify any relevant or admissible

evidence or information which may lead to the identification of admissible or relevant evidence. [items 22, 23, 24, 25, 26, 33(BellSouth objected to providing information so the answer is not complete), 34, 35, 37, 38, 40, 41, 42, 43, 44, 45].

9. That the Consumer Advocate Division has not sought the mental impressions or work product of BellSouth's attorneys, but that the Consumer Advocate Division has a right to acquire information from the same persons providing information to BellSouth and that a subpoena is necessary to permit due diligence by the Consumer Advocate Division.
[items 10, 22, 23, 24]
 10. That the persons that the Consumer Advocate Division seeks to depose are BellSouth's designated representative and the persons identified by BellSouth in item 11.
 11. That BellSouth's responses provide no assurance that any information it actually produces is all of the information on the subject requested in the data request.
 12. That BellSouth responses often do not answer the question asked.
 13. That due diligence requires that counsel conduct such discovery as is sufficient to address the entirety of any issues presented in a case and the discovery permitted by the hearing officer and the responses of BellSouth have not satisfied the due diligence requirements of Tennessee consumers or counsel for Tennessee consumers.
 14. That a decision which does not grant the motions made herein unfairly prejudices Tennessee consumers and the Consumer Advocate Division and prevents substantive and procedural due process.
 15. That the failure of BellSouth to respond adversely affects the procedural schedule.
- Wherefore Tennessee consumers and the Consumer Advocate Division pray that the

Hearing Officer grant the Motion to Compel, to Issue Subpoenas, Take Depositions, to Effect Discovery and to Audit, or Motion in Limine and reconsider the procedural schedule.

Respectfully submitted,

L. Vincent Williams

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Motion to Compel, to Issue Subpoenas, Take Depositions, to Effect Discovery and to Audit or a Motion in Limine has been mailed postage prepaid to the parties listed below this 13th day of April, 2000.

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